

**UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRISBEN CHIMNEY HILLS LIMITED  
PARTNERSHIP; MBS GP 5, LLC; JRK  
RESIDENTIAL AMERICA, LLC; CASEY  
MCGOWAN; LAURA BALL; MEREDITH  
HINKLIN,

Defendants.

Case No.

**CONSENT ORDER**

**I. INTRODUCTION**

1. The United States initiated this action on March 24, 2015, on behalf of Sheryl A. Ghilardi and her minor son ("Complainants") under 42 U.S.C. §§ 3612(o) and 3614. Defendants are Casey McGowan, Laura Ball, Meredith Hinklin, JRK Residential America, LLC ("JRK Residential"), Brisben Chimney Hills Limited Partnership ("Brisben"), and MBS GP 5, LLC (collectively "Defendants"). Defendants are or were owners, operators and/or managers of the Reserve apartment complex ("Subject Property"), a 256-unit multi-family property in Lenexa, Kansas. The United States' complaint alleges that the named Defendants violated the Fair Housing Act ("FHA"), as amended, 42 U.S.C. §§ 3601 *et seq.*, by discriminating on the basis of familial status in the rental of dwellings at the Subject Property and at other properties managed by Defendant JRK Residential in Kansas and Missouri and by retaliating against persons exercising rights protected by the FHA.

2. Defendant JRK Residential managed at least eight (8) multifamily properties in Missouri and Kansas from 2009 to December 30, 2014, including the Subject Property. The

other seven (7) properties, excluding the Subject Property, were Fieldstone Apartments in Olathe, Kansas; Brookstone Village in Independence, Missouri; Crossroads of Lee's Summit in Lee's Summit, Missouri; Lakewood Apartments in Imperial, Missouri; North Oak Crossing in Kansas City, Missouri; Truman Farm in Grandview, Missouri; and Walden Pond in High Ridge, Missouri ("Additional Properties"). One of those properties, Truman Farm in Grandview, Missouri, was sold at the end of 2011. Defendant JRK Residential represents through counsel that as of January 1, 2015 it no longer owns, manages, or operates any properties in the United States. Defendants McGowan, Ball and Hinklin ("Individual Defendants") were employed by JRK Residential at the time of the events alleged in the complaint and provided management services at the Subject Property.<sup>1</sup> Defendant Brisben Chimney Hills Limited Partnership is the owner of the Subject Property and MBS GP 5, LLC is the general partner for Brisben. Defendants Brisben and MBS GP 5, LLC do not own, operate, or manage any properties other than the Subject Property.

3. The United States alleges that Defendant JRK Residential, as managing agent for Defendant Brisben, by and through the Individual Defendants, have engaged in housing practices that discriminate on the basis of familial status and that retaliate against persons exercising their rights under the FHA by:

- a. adopting rules and policies that require adult supervision of children under the age of 16 at all times;
- b. adopting rules and policies that prohibit or restrict the activities of children in the common areas of the property. These include prohibitions on the

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<sup>1</sup> Through counsel, JRK Residential has represented that none of the Individual Defendants are currently employed by JRK Residential and that JRK Residential ceased to manage the Subject Property and the Additional Properties effective December 30, 2014.

playing of team sports by children; prohibitions on the unsupervised use of the pool by children under the age of 16; limitations on the number of children under the age of 16 at the pool supervised by one adult; prohibitions against the use of bicycles and other sports equipment on the property;

- c. adopting rules and policies that threaten tenants with adverse consequences, including that defendants will initiate eviction proceedings, confiscate property, call “911” and report tenants to social services or to the housing authority if these rules are violated; and
- d. declining to renew Complainant’s lease after she expressed concern to the property management about these discriminatory rules.

4. On December 5, 2012, Complainants filed an administrative complaint with the United States Department of Housing and Urban Development (“HUD”), alleging that Defendants discriminated against them based on familial status, in violation of the FHA.

5. The Secretary of HUD (“the Secretary”) completed an investigation of the complaint, which included extensive interviews of the Complainants, witnesses, and property management staff of the Subject Property. Following the investigation, on September 24, 2014, the Secretary issued a Determination of Reasonable Cause and Charge of Discrimination, charging the Defendants with discriminatory housing practices in violation of the FHA (the “Determination”). The Determination does not constitute an adverse final decision by the Secretary of HUD.

6. On September 30, 2014, the Complainant elected to have the Charge of Discrimination resolved in a civil action filed in federal district court. The Secretary therefore



authorized the Attorney General to commence this civil action, pursuant to 42 U.S.C. § 3612(o) of the FHA.

7. On March 24, 2015 the United States filed this action to enforce the provisions of the FHA.

8. The United States alleges that, through this conduct, the Defendants have:

- a. Violated 42 U.S.C. § 3604(a) by making unavailable and/or denying housing because of familial status;
- b. Violated 42 U.S.C. § 3604(b) by discriminating in the terms, conditions, or privileges of rental of a dwelling, and/or in the provision of services or facilities in connection therewith, because of familial status;
- c. Violated 42 U.S.C. § 3604(c) by making, printing, or publishing, and/or causing to be made, printed or published, any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination;
- d. Violated 42 U.S.C. § 3617 by coercing, intimidating, threatening and/or interfering with persons exercising or enjoying, and/or because persons exercised or enjoyed, rights protected under the FHA; and
- e. Violated 42 U.S.C. § 3614(a) by engaging in a pattern or practice of resistance to the full enjoyment of rights granted by the FHA, and/or denying fair housing rights to a group of persons, raising an issue of general public importance.

9. Defendants deny violating any law or engaging in any wrongful conduct of any

type or nature as alleged by Complainants and the United States; in particular, and without limiting the foregoing, Defendants deny that any discriminatory policies were instituted at the Additional Properties and deny that Defendants retaliated against Complainant Ghilardi and her minor son. This Consent Order is a compromise of disputed claims and is not an admission by Defendants, each of which expressly denies liability.

10. In order to avoid costly and protracted litigation, the parties have chosen to resolve this matter through a negotiated settlement. By their signatures below, the parties hereby consent to the entry of this Consent Order and the attached Judgment.

11. Through counsel, Defendant JRK Residential represents that it no longer owns, manages, or operates the Additional Properties, and that it does not intend to own, manage, or operate the Additional Properties during the term of this Consent Order. In addition to its obligations under this Consent Order at the time it is entered, should Defendant JRK Residential, its agents, successors or assigns own, manage, or operate any of the Additional Properties during the term of this Consent Order as set forth in Paragraph 55, Defendant JRK Residential must: (1) notify counsel for the United States within 15 days; and (2) to the extent not already provided by the Consent Order, comply with the full extent of the provisions set forth in Sections III-VI, IX, and XI of this Consent Order, including those that apply to Defendant Brisben and/or the Subject Property, which will apply in the same manner to Defendant JRK Residential and/or the Additional Properties. Additionally, should Defendant JRK Residential re-enter the property management business in any capacity, by owning, operating or managing properties during the term of this Consent Order as set forth in Paragraph 55, Defendant JRK Residential must: (1) notify counsel for the United States within 15 days; and (2) comply with the full extent of the provisions set forth in Section III of this Consent Order, including those that apply to Defendant



Brisben and/or the Subject Property, which will apply in the same manner to Defendant JRK Residential and/or the properties with which it is affiliated. The time period set forth for compliance with these Sections shall run from the date upon which Defendant JRK Residential begins owning, managing, or operating the Additional Properties and/or other properties. Within 10 days of this trigger date, Defendant JRK Residential must notify the property owner of the Additional Property(ies) and/or other properties on which it is employed or otherwise affiliated of this lawsuit and its resolution by providing the property owner with a copy of this Consent Order. Within 20 days of this notification, Defendant JRK Residential must provide written notice to counsel for the United States of the address and telephone number of the property owner and a sworn certification that it has informed the property owner of this lawsuit by providing it with a copy of this Consent Order.

12. Through counsel, Individual Defendants represent that they are no longer employed by Defendant JRK Residential. In addition to their obligations under this Consent Order at the time it is entered, should any of the Individual Defendants be employed at any property owned, managed, or operated by Defendant JRK Residential during the term of this Consent Order as set forth in Paragraph 55, Defendant JRK Residential must: (1) notify counsel for the United States within 15 days; and (2) to the extent not already provided by the Consent Order, comply with the full extent of the provisions set forth in Sections III-VI, IX, and XI of this Consent Order, including those that apply to Defendant Brisben and/or the Subject Property, which will apply in the same manner to Defendant JRK Residential and/or the properties on which Individual Defendant(s) are employed and/or the properties over which Individual Defendant(s) have managerial responsibilities. The time period set forth for compliance with these Sections shall run from the date upon which Individual Defendant(s) begins employment.

Within 10 days of this trigger date, Defendant JRK Residential must notify the property owner of the property(ies) with which the Individual Defendant(s) are affiliated of this lawsuit and its resolution by providing the property owner with a copy of this Consent Order. Within 20 days of this notification, Defendant JRK Residential must provide written notice to counsel for the United States of the address and telephone number of the property owner and a sworn certification that it has informed the property owner of this lawsuit by providing it with a copy of this Consent Order.

Therefore, it is **ADJUDGED, ORDERED and DECREED** as follows:

## II. GENERAL INJUNCTION

13. The Defendants, their agents, employees, successors and assigns are hereby enjoined, with respect to the rental of dwellings,<sup>2</sup> from:

- a. Making unavailable or denying a dwelling to any person because of familial status;
- b. Discriminating against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, because of familial status;
- c. Making, printing, or publishing, or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on familial status, or an intention to make any such preference, limitation, or discrimination; and

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<sup>2</sup> The term “dwellings” has the meaning set out in the Fair Housing Act, 42 U.S.C. § 3602(b).



- d. Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, any right granted or protected by section 804 of the FHA.

### **III. SPECIFIC INJUNCTIVE RELIEF WITH RESPECT TO DEFENDANTS' POLICIES AND RULES**

14. Upon entry of this Consent Order, Defendant Brisben shall cause its managing agent to implement the Nondiscrimination Policy appearing at **Appendix A** at the Subject Property.

15. Defendant Brisben shall, within 45 days of the entry of the Consent Order, provide the United States with a letter acknowledging that any past policies, community rules, leases, rental documents, newsletters, and any other statements approving of, endorsing, adopting, or otherwise citing the validity of policies discriminating on the basis of familial status have been rescinded. This includes those policies or other documents issued at the Subject Property that:

- a. require the supervision of children under the age of 16 inside and outside the apartment units;
- b. require adult supervision of all children under the age of 16 at a swimming pool or that require that one adult may not supervise more than two children under the age of 16 at a swimming pool;
- c. bar or limit children from using the common areas, including grassy areas, except for those rules that are generally applicable to all persons regardless of familial status or age ("generally applicable");
- d. ban or limit the possession of recreational equipment primarily used by children, including bicycles, tricycles, skateboards, scooters, and other



recreational equipment. Defendant Brisben may impose reasonable limits on the location of the use of such equipment, so long as those limits are generally applicable;

- e. ban or limit recreational activities primarily engaged in by children, such as playing of soccer or team sports. Defendant Brisben may impose reasonable limits on the location of such activities, so long as those limits are generally applicable; or
- f. threaten to confiscate property, initiate eviction proceedings, call “911,” social services or the housing authority for breach of policies regarding children.

16. Subject to the procedures set out in Paragraph 17 *infra*, Defendant Brisben, through its managing agent, may adopt new policies or practices that do not discriminate on the basis of familial status. Defendant Brisben may not impose, maintain, ratify, implement, or enforce any policy or practice that replicates the prohibitions set out in Paragraph 15 (a) – (f) *supra*. Defendant Brisben may require children to be accompanied by an adult when using the pool if the requirement applies to children under a reasonable age.

17. If Defendant Brisben through its managing agent, or through any officer, director, or assign, elects to adopt new policies or rules with respect to children, it must submit these proposed policies and rules to the United States for review and approval at least 45 days prior to their proposed effective date. The United States shall have 30 days following receipt of these policies to communicate any objections to counsel for Defendants. The parties shall, in good faith, attempt to resolve any disagreements over the terms of the proposed policies. If the parties cannot agree, any party may move the Court for relief. The provisions of the proposed policies

to which there are disputes shall not be placed into effect until such time that the parties or the Court resolves the disputes. To the extent that Defendant Brisben seeks to implement rules that require children to be accompanied by an adult when using the pool, it must specify the sources on which it relies to determine the age under which it will require adult supervision at the pool.

#### IV. NOTICE OF NON-DISCRIMINATORY POLICIES

18. Within 60 days of the entry of the Consent Order, Defendant Brisben, through its managing agent, shall distribute to all current tenants at the Subject Property the Nondiscrimination Policy at **Appendix A**, a copy of this Consent Order, and a written notice that the policies set forth in Paragraph 15 *supra* have been rescinded. Defendants may distribute new policies, approved by the United States pursuant to Paragraph 17 *supra*, at this time or at any time following their approval.

19. Within 60 days of the entry of this Consent Order, Defendant Brisben, through its managing agent, shall distribute the Nondiscrimination Policy at **Appendix A**, a copy of this Consent Order, and a written notice that the policies set forth in Paragraph 15 *supra* have been rescinded to all of its current employees, agents, and anyone acting under the direction of Defendant Brisben responsible for showing, renting, managing, or operating any and all dwelling units, including units at the Subject Property.

20. Within 60 days of the entry of the Consent Order, Defendants Brisben or its designee(s) must post the Nondiscrimination Policy and a notice in each property's rental and/or management office for a minimum of 90 consecutive days that the policies set forth in Paragraph 15 *supra* have been rescinded at the Subject Property. Defendants may post any new policies after they have been approved by the United States pursuant to Paragraph 17 *supra*.

21. Within 60 days of the entry of the Consent Order, Defendant Brisben must



provide written notice to and conference with The Yarco Company, Inc., including all employees or agents assigned to the Subject Property, explaining the changes in the Subject Property's policies and practices. This notice shall include a copy of this Consent Order and a statement that the policies set out in Paragraph 15 *supra* have been rescinded.

22. Within 90 days of the entry of this Consent Order, Defendant Brisben or its designee(s) shall secure a signed statement from each agent and employee who has responsibility for showing, renting, managing, or operating any and all dwelling units at the Subject Property, acknowledging that he or she has received, read, and understands the Consent Order and the Nondiscrimination Policy. The statement must include a provision that the employee has had an opportunity to have questions about these documents answered and agrees to abide by the relevant provisions of the Consent Order and the Nondiscrimination Policy. This statement shall be in the form of **Appendix B**.

23. During the term of this Consent Order, within 30 days after each new agent or employee becomes involved in showing, renting, or managing units at the Subject Property, Defendant Brisben, through its managing agent, shall provide a copy of this Consent Order and the Nondiscrimination Policy to each such agent or employee and secure his or her signed acknowledgment in the form of **Appendix B**.

24. Within 30 days of the entry of this Consent Order, Defendant Brisben or its designees shall take the following steps to notify the public of the Nondiscrimination Policy:

- a. Prominently post at all rental offices that Defendant Brisben currently or subsequently uses for the rental of dwellings a fair housing sign no smaller than 10 inches by 14 inches that indicates that all units are available for

rent on a nondiscriminatory basis. A poster that comports with 24 C.F.R. Part 110 will satisfy this requirement;

- b. Include the words “Equal Housing Opportunity” and/or the fair housing logo in all rental advertising conducted by Defendant Brisben, or its agents or employees, in newspapers, flyers, handouts, telephone directories and other written materials; on radio, television, internet or other media broadcasts; and on all billboards, signs, pamphlets, brochures and other promotional literature, provided that this requirement does not compel Defendant Brisben to advertise in any of these media, but does require compliance with this provision whenever Defendant Brisben so advertises. The words and/or logo shall be prominently placed and easily readable;
- c. Include the following phrase in the rental application(s) and the rental agreement(s) used for rental dwelling units from the date of this Consent Order going forward in boldface type, using letters of equal or greater size to those of the text in the body of the document:

We are an equal housing opportunity provider. We do not discriminate on the basis of race, color, sex, national origin, religion, disability or familial status (having children under age 18).

## **V. TRAINING**

25. Within 90 days from the date of entry of this Consent Order, all managers, agents and employees at the Subject Property shall undergo in-person training on the FHA, with specific emphasis on discrimination on the basis of familial status and retaliation for exercising or enjoying rights protected by the FHA. The training shall be conducted by an independent, qualified third party identified by Defendant Brisben and approved by the United States. Any



expenses associated with this training shall be borne by Defendant Brisben. Each individual who receives the training shall execute the Certification of Completion of Training, appearing at

**Appendix C.**

26. Within 90 days from the date of entry of this Consent Order, Individual Defendants shall undergo in-person training on the FHA, with specific emphasis on discrimination on the basis of familial status and retaliation for exercising or enjoying rights protected by the FHA. The training shall be conducted by an independent, qualified third party.